

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4009 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgement?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BELIM JIVA RAHIM SULTAN

Versus

DISTRICT COLLECTOR

Appearance:

MR PK PAREKH for Petitioners

MS MEETA S. PANCHAL for M/S.NANAVATI ADVOCATES for
Respondent No. 4 - Agricultural Produce Market
Committee, Veraval.

MR PB BHATT, ld.Asstt.Govt.Pleader for Respondent
Nos. 1 to 3

No one is present on behalf of respondent no.5.

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/04/99

ORAL JUDGEMENT (per M.R. Calla, J.)

Heard learned Counsel. This Special Civil Application was filed in this Court on 2nd May 1997. The ex parte ad-interim order in terms of Para 18(B) was granted on 3rd June 1997 and it lasted upto 30th September 1997.

2. It appears that the main Special Civil Application itself was dismissed on account of the absence on 30th September 1997 and the same was restored by order dated 4th December 1998 (Coram: J.M.Panchal & M.H.Kadri, JJ.). It appears that during the pendency of this petition, while there was a stay order in terms of Para 18(B), i.e. with regard to the possession only in the acquisition proceedings, after the ad-interim order was vacated on 30th September 1997, the award was passed on 7th January 1999. Amendment was then sought challenging the award dated 7.1.1997.

3. The learned Counsel for the petitioners Mr.Parekh has argued that the date of the declaration under Section 6 being 27th August 1996 and date of its publication in the Gazette being 19th September 1996, even if the period from 3rd June 1997 to 30th September 1997 during which the stay remained operative is excluded, the award has been passed after a period of two years and, therefore, the award cannot be sustained in the eye of law. On behalf of the respondents it has been pointed out that though the notification under Section 6 is dated 27th August 1996 and it is also true that it was published in the Gazette on 19th September 1996, the fact remains that it was lastly notified on 7th November 1996 as is evident from the xerox copy of the order sheet (Rojkam) dated 7th November 1996 available at page no.53 in the documents filed with the affidavit-in-reply on behalf of the respondent no.2, dated 18th July 1997 that it was lastly notified on 7th November 1996.

4. Therefore we find that for the purpose of computing the period of two years, the last date of publication has to be taken into account and the last date of publication has to be taken as 7th November 1996 in the instant case, instead of 27th August 1996 or 19th September 1996. Reading of Section 6(2) with the explanation below Section 11 makes the position clear. Section 6(2) and the explanation under Section 11A are reproduced as under:

"6. Declaration that land is required for a public purpose.- (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the

report, if any, made under Sec.5-A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a secretary to such Government or of some officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Sec.4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Sec.5-A, sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Sec.4, sub-section (1):

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority."

"11-A. Explanation-- In computing the period of two years referred to in this section, the period during which any action of proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

The same view was taken by a Division Bench of this Court in the case of Ismail Gulam Mahmad reported in 1991 (2) GLR 885. The Division Bench, in the aforesaid case of

Ismail Gulam Mahmad (supra) had noted that the notification under Section 6 was issued on 12th August 1985, it was published in the Gujarat Government Gazette on 27th September 1985 and it was also published in Gujarati and English newspapers on 30th August and 28th August 1985 respectively and further that it was also published in the Mamlatdar's office at Village Panchayat and at the site on 6th November 1985. In that case, the award was declared on 2nd November 1987 and the Division Bench found that the award was passed within two years from the last date of publication of the declaration and such last date of declaration was taken to be 6th November 1985, i.e. the date on which it was published at the site in the locality. We are, therefore, fortified in our view by the aforesaid Division Bench authority.

5. The learned Counsel for the petitioners has also argued that in this case, the stay order which had been passed by this Court and which remained operative for a period of three months and 27 days from 3rd June 1997 to 30th September 1997 was only with regard to the possession and it was not the stay of the proceedings as such. In the first instance, we may straightway observe that the words used in the Explanation viz, "the period during which any action of proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded" are of significance. "Such action" therefore, would include the action with regard to the possession and, therefore, the stay order may be passed in any terms, the fact remains that the action of the proceedings to be taken in pursuance of the said declaration has remained stayed, may be, with regard to the possession. However, it is not decisive as to whether the stay is for possession or proceedings. What is important is stay of any action to be taken in pursuance of the proceedings. This question has already been considered and decided by the Supreme Court in the case of Govt. of Tamil Nadu v. Vasantha Bai, reported in AIR 1995 SC 1778 wherein the Supreme Court has observed that the order of stay of the possession passed by the High Court would tantamount to stay of further proceedings being taken under Sec.11 and Explanation to Section 11-A covers such an order, the entire period of stay has to be excluded in computing the period of two years prescribed by Sec.11-A.

6. In this view of the matter, we find that in the instant case, the award dated 7th January 1999 which has been challenged by way of amendment in this petition, cannot be set aside on the ground that it has been passed

after a period of two years from the date of declaration because, we have come to the conclusion as a question of fact that it was passed within a period of two years from the last date of the publication. In the instant case, the last date of publication being 7th November 1996, upto 7th January 1999, i.e. the date of the award, the total period is two years and two months, whereas the stay order passed by this Court remained operative from 3rd June 1997 to 30th September 1997, i.e. for a period of three months and 27 days and once this period is excluded from the period of two years and two months, the award is found to have been passed within a period of two years and on this ground, the award cannot be set aside.

7. Faced with such a situation, the learned Counsel for the petitioners referred to paragraph 8 of the petition and submitted that in paragraph 8 he has levelled allegations of malafide against the then Civil Supplies Minister Shri Jesabhai Barad, respondent no.5 by name. While the respondent no.4 Agricultural Produce Market Committee has contested these allegations and no return has been filed by the respondent no.5 himself, we find that even otherwise the allegations which are levelled in paragraph 8 are absolutely vague and bald in nature. For the purpose of striking an action or order, on the grounds of malafide, a party has to come with a positive case and definite allegations so as to inspire confidence about the fool-proof correctness of such allegations. In paragraph 8 of the petition all that has been said by the petitioner is that for the purpose of agricultural produce market yard, the lands had been purchased about 4-5 years back on Govindpura-Talala Road by Kalabhai Ranmal Zala and the market yard was to be located thereupon; with the prices of the land being increased 10 times more, said Kalabhai Ranmal Zala and others having vested interests, wanted to make huge profit out of these lands and hence, they had malafidely suggested to illegally acquire the lands of the petitioners and in doing so, they utilised the influence of Shri Jesabhai Barad as the Minister of Civil Supplies. But, whom he had influenced, when did he pressurise the concerned functionaries of the State under the Land Acquisition Act and what was the exact point of time when such influence is alleged to have been exercised, nothing has been indicated in paragraph 8. For the purpose of allegation of malafide, one has to give meticulous details so as to enable the Court to check and cross check the correctness and propriety of such allegations. No action can be set aside on such vague and bald allegations which do not lead anywhere and this Court while exercising the jurisdiction under Article 226 of

the Constitution of India, is not supposed to act on such uncertain allegations without any details either with regard to the point of time or with regard to the officers or functionaries or the persons who acted in this regard so as to issue notifications under the Land Acquisition Act. Moreover, it is also clear that the concerned respondent no.5-Shri Jasabhai Barad was not the Minister concerned with the Department of Land Acquisition and he is said to be the Minister for Civil Supplies at the relevant time. Therefore, there is no substance in the allegation of malafide.

8. We do not find any substance in this Special Civil Application. The same is hereby dismissed. The notice is hereby discharged. No order as to costs.

sreeram.